

**Memorandum**

Date NOV 4 1994

From June Gibbs Brown
Inspector General *June G. Brown*

Subject OIG Final Report: "Medicaid Overpayments for Post-Partum Care to Undocumented Aliens," OEI-07-95-00010

To Bruce C. Vladeck
Administrator
Health Care Financing Administration

The purpose of this memorandum is to alert you to information we uncovered during a review of the Systematic Alien Verification for Entitlements (SAVE) program. We have found evidence that some State agencies are making improper payments for pregnancy services delivered to undocumented aliens. This information has been shared with HCFA staff, who have already taken some action on the information we have provided.

Background

While a number of sections of Title XIX define eligible populations for medical assistance generally, and pregnancy related services specifically, Section 1902(a) qualifies such language by stating:

"Notwithstanding paragraph (10)(B) or any other provision of this subsection, a State Plan shall provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in accordance with section 1903(v)".

Section 1903(v) states that unrestricted Medicaid payments can be made for those aliens lawfully admitted for permanent residence or are permanently residing in the United States under color of law. For those aliens who are not lawfully admitted to the United States, known as undocumented aliens, Medicaid payments can be made for an emergency condition only. The statute defines "emergency medical condition" as a medical condition (including emergency labor and delivery) which manifests itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:

- (A) placing the patient's health in serious jeopardy
- (B) serious impairment to bodily functions, or
- (C) serious dysfunction to any bodily organ or part.

Under such a definition, Federal financial participation (FFP) is not available for routine prenatal or post-partum care for undocumented aliens.

Current Study

We are currently conducting a review of the cost-effectiveness of the SAVE program, which is administered by the Immigration and Naturalization Service. States are required to use SAVE to verify the immigration status of alien applicants for Aid to Families with Dependent Children and Medicaid. Our inspection included a review of SAVE in four States: California, Florida, Illinois, and Texas.

As part of our review, we analyzed a sample of client case files in each State to determine if SAVE had identified clients who had applied for benefits but were not eligible because of their immigration status. The results of this review will be detailed in a full report on the cost-effectiveness of SAVE which will be issued later in the year.

Findings

During the course of our study, we were informed by county case workers in California that the Medi-Cal (Medicaid) program covers prenatal and post-partum care for undocumented aliens. To follow up on this information, we contacted the California Department of Health Services, which administers Medi-Cal. We requested a written response to questions we submitted to them concerning coverage of pregnancy related services for undocumented aliens.

The Department responded that California does not cover prenatal care for undocumented aliens under the Federal/State portion of the Medi-Cal program. Prenatal care for eligible undocumented aliens is provided under a State only financed program. However, the Department stated that California does cover post-partum care for undocumented aliens under the Federal/State financed program.

Upon receipt of this information from California, we contacted staff in the HCFA Medicaid Bureau to confirm our conclusion that the State erred in covering routine post-partum care for undocumented aliens under the Medi-Cal program. We sent HCFA the response from the California Department of Health Services, as well as a summary of their Medi-Cal Manual which addresses coverage of pregnancy related services. We also forwarded a copy of the Illinois Department of Public Aid Medicaid instructions to their counties concerning coverage of pregnancy related services, which seemed to represent a similar interpretation of the law.

The HCFA staff responded that it appeared that both California and Illinois were making incorrect payments based on their State Medicaid policies. In subsequent conversations between HCFA central office staff, regional staff, and State of California staff, State officials admitted that erroneous Federal Medicaid costs have been claimed based upon their incorrect interpretation and issuance of State policy describing coverage of post-partum care for undocumented aliens. The HCFA also contacted its regional staff for the State of Illinois, where we found evidence of a similar problem.

We have contacted Florida and Texas, the other two States in our sample. It appears they are following the intent of the law and are not paying for routine pregnancy services for undocumented aliens.

Recommendation

The HCFA staff has verbally informed us they intend to issue a notice to all of their regional offices to assure that Federal Medicaid funding is claimed only for emergency labor and delivery services provided to pregnant undocumented aliens. We support this clarification in procedure and would appreciate receiving a copy of the notice.

We further suggest, in addition to clarifying policy, that HCFA systematically contact all States to determine where overpayments may have been made for pregnancy related care for undocumented aliens because of confusion in State policy. Based on the information collected through this review, HCFA should initiate recoveries. We also request that HCFA notify us of the total overpayments identified, and the total recovered.

Should you have any questions or comments concerning this memorandum or the results of our review, please do not hesitate to contact me or George Grob, Deputy Inspector General for Evaluation and Inspections, or have your staff contact Penny Thompson at (410) 966-3138.